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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/696,154	10/29/2003	Judy-Lynne Alley	3961P2596	6586
23504	7590	01/23/2006	EXAMINER	
WEISS & MOY PC 4204 NORTH BROWN AVENUE SCOTTSDALE, AZ 85251			HOEY, ALISSA L	
			ART UNIT	PAPER NUMBER
			3765	

DATE MAILED: 01/23/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b> 10/696,154	<b>Applicant(s)</b> ALLEY, JUDY-LYNNE	
	<b>Examiner</b> Alissa L. Hoey	<b>Art Unit</b> 3765	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 21 December 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-18 and 20-22 is/are pending in the application.
- 4a) Of the above claim(s) 3, 12 and 20-22 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 4-11 and 13-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Response to Amendment***

#### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 11/21/05 has been entered.

#### ***Affidavit/Declaration***

2. The affidavit filed on 11/21/05 under 37 CFR 1.131 is sufficient to overcome the Aarons reference.

#### ***Double Patenting***

3. Claims 10, 11, 12, 14 and 18 of this application conflict with claims 12-14, 16 and 22 of Application No. 10/851,749. 37 CFR 1.78(b) provides that when two or more applications filed by the same applicant contain conflicting claims, elimination of such claims from all but one application may be required in the absence of good and sufficient reason for their retention during pendency in more than one application. Applicant is required to either cancel the conflicting claims from all but one application or maintain a clear line of demarcation between the applications. See MPEP § 822.

4. Claims 1, 3-10, 12 and 14-17 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 3-7, 9-18 and 20-22 of copending Application No. 10/851,749. Although the conflicting claims are not identical, they are not patentably distinct from each other because they claim the same structure.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 4, 6 and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Kaspar (US 4,728,538).

In regard to claim 1, Kaspar teaches a slip-resistant extremity covering (10) for a person wanting to increase the gripping surface on smooth floors or gym mats, which would include yoga exercise (column 1, lines 17-23). The extremity covering dimensioned to fit snugly around an extremity of a person and having a palmer surface and a dorsal surface (figures 1, 2 and 3). The extremity covering being constructed of a sufficiently malleable material so as to allow an extremity a full range of movement (column 1, lines 17-23). A slip-resistant material coupled to at least one of the palmer

surface and the dorsal surface (figures 1, 2 and 3). The slip-resistant material (22) having a high coefficient of friction while at the same time allowing the extremity a full range of movement while inside the extremity covering (column 3, lines 48-59).

In regard to claim 4, Kaspar teaches the slip-resistant material comprising a plurality of raised surfaces having a high coefficient of friction (column 5, lines 13-22).

In regard to claim 6, Kaspar teaches the slip-resistant material comprising an electrometric material having a high coefficient of friction (column 4, lines 9-20).

In regard to claim 7, Kaspar teaches the slip-resistant material comprising a uniform surface having a height coefficient of friction (column 5, lines 24-31).

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 5, 8-10 and 13-18 rejected under 35 U.S.C. 103(a) as being unpatentable over Kaspar.

In regard to claims 8 and 17, Kaspar teaches the extremity covering being a stocking, sock or tight garment. However, Kaspar fails to discuss what the stocking, sock or tight are made of.

It would have been obvious to one having ordinary skill in the art to have produced a sock, stocking or tight garment made out of cotton-lycra type fabric, since it

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is well known in the apparel arts to construct tight, socks and stockings out of a cotton-lycra material.

In regard to claims 9 and 18, Kaspar teaches the extremity covering being a stocking, sock or tight garment. However, Kaspar fails to discuss what the stocking, sock or tight are made of.

It would have been obvious to one having ordinary skill in the art to have provided a sock, stocking or tight garment made out of an absorbent material, since it is well known to make sock, stockings or tight garments in cotton material, which is absorbent.

In regard to claim 5 and 14, Kaspar fails to teach the plurality of raised surfaces being substantially dumbbell shaped. However, Kaspar teaches that the raised non-slip surfaces can be any of a variety of suitable shapes (column 4, lines 6-8).

At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to have provided the raised surfaces being dumbbell shaped because Applicant has not disclosed that the raised surfaces being dumbbell shaped provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicants invention to perform equally well with the raised surfaces being dumbbell, hemispherical or cylindrical in shape because as long as the raised surfaces are non-slip and provide traction to the covering the shape is not critical as supported in Applicant's specification on page 8, lines 1-6. Therefore, it would have been an obvious

matter of design choice to modify Kaspar to obtain the invention as specified in claims 5 and 14.

In regard to claim 10, Kaspar teaches a garment as described above in this office action. However, Kaspar fails to teach the method for practicing yoga comprising the step of providing an extremity covering dimensioned to fit snugly around an extremity of a person. Inserting an extremity of a person into the extremity covering and practicing a yoga technique.

It would have been obvious for the slip-resistant garment of Kaspar to be used during the practice of yoga, since the garment of Kaspar is to be used to increase the gripping surface of a garment on smooth floors and gym mats during vigorous exercise or dance and yoga is a exercise that is performed on gym mats.

In regard to claim 13, Kaspar teaches the slip-resistant material comprising a plurality of raised surfaces having a high coefficient of friction (column 4, lines 9-15).

In regard to claim 15, Kaspar teaches the slip-resistant material comprising an electrometric material having a high coefficient of friction (column 4, lines 9-15).

In regard to claim 16, Kaspar teaches the slip-resistant material comprising a uniform surface having a high coefficient of friction (column 5, lines 24-31).

### ***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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6. Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being anticipated by Schulkin (US 5,500,956).

In regard to claim 1, Schulkin teaches a slip-resistant extremity covering (1) for a person wanting to increase the gripping surface during working out, which would include yoga exercise (column 1, lines 5-10). The extremity covering dimensioned to fit snugly around an extremity of a person and having a palmer surface and a dorsal surface (figures 1 and 2). The extremity covering being constructed of a sufficiently malleable material so as to allow an extremity a full range of movement (column 2, lines 42-49). A slip-resistant material coupled to at least one of the palmer surface and the dorsal surface (figures 1 and 2). The slip-resistant material (25) having a high coefficient of friction while at the same time allowing the extremity a full range of movement while inside the extremity covering (column 4, lines 54-66).

In regard to claim 2, Schulkin teaches the extremity covering being dimensioned to fit snugly around a hand of a person (figures 1 and 2).

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schulkin et al.



Schulkin teaches a slip-resistant extremity covering as described above in claims 1 and 2. However, Schulkin fails to teach wearing the extremity covering while practicing a yoga technique.

It would have been obvious to have provided the apparatus of Schulkin to be used during the method as described in claim 10 and 11, since the slip-resistant extremity covering is capable of being worn during yoga and one playing basketball is also capable of stretching before play using a yoga position for stretching.

### ***Conclusion***

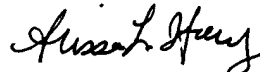
9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Stanton, Mulvihill, Pirie, Najac, Bayer, Reis, Jennings, Chen et al., Tarail, Suarkeo, Holden, DeSena, Winters, Lindsay, Cacioppo and Hilbert are all cited to show closely related garment articles.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alissa L. Hoey whose telephone number is (571) 272-4985. The examiner can normally be reached on M-F (8:00-5:30) Second Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on (571) 272-4983. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
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